

110TH CONGRESS
2D SESSION

S. 3577

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 17), 2008

Mr. LEVIN (for himself, Mr. BINGAMAN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Prevent Excessive Speculation Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of energy and agricultural commodity.
- Sec. 3. Speculative limits and transparency of off-shore trading.

- Sec. 4. Authority of Commodity Futures Trading Commission with respect to certain traders.
- Sec. 5. Working group of international regulators.
- Sec. 6. Position limits for energy and agricultural commodities.
- Sec. 7. Over-the-counter transactions.
- Sec. 8. Index traders and swap dealers.
- Sec. 9. Disaggregation of index funds and other data in energy and agricultural markets.
- Sec. 10. Additional Commodity Futures Trading Commission employees for improved enforcement.
- Sec. 11. Working Group on Energy Markets.
- Sec. 12. Study of regulatory framework for energy markets.
- Sec. 13. Collection and analysis of information on energy commodities.
- Sec. 14. National natural gas market investigation.
- Sec. 15. Studies; reports.
- Sec. 16. Expedited procedures.

1 SEC. 2. DEFINITIONS OF ENERGY AND AGRICULTURAL
2 COMMODITY.

3 (a) DEFINITION OF ENERGY COMMODITY.—Section
4 1a of the Commodity Exchange Act (7 U.S.C. 1a) is
5 amended—

6 (1) by redesignating paragraphs (13) through
7 (34) as paragraphs (14) through (35), respectively;
8 and

9 (2) by inserting after paragraph (12) the fol-
10 lowing:

11 “(13) ENERGY COMMODITY.—The term ‘energy
12 commodity’ means—

13 “(A) crude oil;

14 “(B) natural gas;

15 “(C) coal;

16 “(D) gasoline, heating oil, diesel fuel, and any
17 other source of energy derived from coal, crude oil,
18 or natural gas;

1 “(E) electricity;

2 “(F) ethanol and any other fuel derived from a
3 renewable biomass;

4 “(G) any commodity that results from the man-
5 agement of air emissions, including but not limited
6 to greenhouse gases, sulfur dioxide, and nitrogen ox-
7 ides; and

8 “(H) any other substance that is used as a
9 source of energy, as the Commission, in its discre-
10 tion, deems appropriate.”.

11 (b) DEFINITION OF AGRICULTURAL COMMODITY.—
12 Section 1a of the Commodity Exchange Act (7 U.S.C. 1a)
13 is amended—

14 (1) by redesignating paragraphs (1) through
15 (35) as paragraphs (2) through (36), respectively;
16 and

17 (2) by inserting a new paragraph (1) as follows:

18 “(1) AGRICULTURAL COMMODITY.—The term
19 ‘agricultural commodity’ means any commodity spe-
20 cifically described in paragraph (5).”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 2(c)(2)(B)(i)(II)(cc) of the Com-
23modity Exchange Act (7 U.S.C.
24 2(c)(2)(B)(i)(II)(cc)) is amended—

1 (A) in subitem (AA), by striking “section
2 1a(20)” and inserting “section 1a(21)”; and

3 (B) in subitem (BB), by striking “section
4 1a(20)” and inserting “section 1a(21)”.

5 (2) Section 13106(b)(1) of the Food, Conserva-
6 tion, and Energy Act of 2008 is amended by striking
7 “section 1a(32)” and inserting “section 1a”.

8 (3) Section 402 of the Legal Certainty for
9 Bank Products Act of 2000 (7 U.S.C. 27) is amend-
10 ed—

11 (A) in subsection (a)(7), by striking “sec-
12 tion 1a(20)” and inserting “section 1a”; and

13 (B) in subsection (d)—

14 (i) in paragraph (1)(B), by striking
15 “section 1a(33)” and inserting “section
16 1a”; and

17 (ii) in paragraph (2)(D), by striking
18 “section 1a(13)” and inserting “section
19 1a”.

20 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**
21 **SHORE TRADING.**

22 Section 4 of the Commodity Exchange Act (7 U.S.C.
23 6) is amended by adding at the end the following:

24 “(e) FOREIGN BOARDS OF TRADE.—

1 “(1) IN GENERAL.—The Commission may not
2 permit a foreign board of trade to provide to the
3 members of the foreign board of trade or other par-
4 ticipants located in the United States, or otherwise
5 subject to the jurisdiction of the Commission, direct
6 access to the electronic trading and order matching
7 system of the foreign board of trade with respect to
8 an agreement, contract, or transaction in an energy
9 commodity that settles against any price (including
10 the daily or final settlement price) of one or more
11 contracts listed for trading on a registered entity,
12 unless—

13 “(A) the foreign board of trade—

14 “(i) makes public daily trading infor-
15 mation regarding the agreement, contract,
16 or transaction that is comparable to the
17 daily trading information published by the
18 registered entity for the one or more con-
19 tracts against which the agreement, con-
20 tract or transaction traded on the foreign
21 board of trade settles; and

22 “(ii) promptly notifies the Commission
23 of any change regarding—

1 “(I) the information that the for-
2 eign board of trade will make publicly
3 available;

4 “(II) the position limits and posi-
5 tion accountability provisions that the
6 foreign board of trade will adopt and
7 enforce;

8 “(III) the position reductions re-
9 quired to prevent manipulation; and

10 “(IV) any other area of interest
11 expressed by the Commission to the
12 foreign board of trade; and

13 “(B) the foreign board of trade (or the for-
14 eign futures authority that oversees the foreign
15 board of trade)—

16 “(i) adopts position limits or position
17 accountability provisions for the agree-
18 ment, contract, or transaction that are
19 comparable to the position limits or posi-
20 tion accountability provisions adopted by
21 the registered entity for the one or more
22 contracts against which the agreement,
23 contract or transaction traded on foreign
24 board of trade settles;

1 “(ii) has the authority to require or
2 direct market participants to limit, reduce,
3 or liquidate any position the foreign board
4 of trade (or the foreign futures authority
5 that oversees the foreign board of trade)
6 determines to be necessary to prevent or
7 reduce the threat of price manipulation,
8 excessive speculation, price distortion, or
9 disruption of delivery or the cash settle-
10 ment process; and

11 “(iii) provides information to the
12 Commission that is comparable to the in-
13 formation that the Commission determines
14 to be necessary to publish the commit-
15 ments of traders report of the Commission
16 for the one or more contracts against
17 which the agreement, contract or trans-
18 action traded on the foreign board of trade
19 settles.

20 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

21 Paragraph (1) shall not be effective with respect to
22 any agreement, contract, or transaction in an energy
23 commodity executed on a foreign board of trade to
24 which the Commission had granted direct access
25 permission prior to the date of enactment of this

subsection until the date that is 180 days after the date of enactment of this subsection.

“(3) EXISTING CONTRACTS.—No contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange or market located outside the United States for purposes of subsection (a) shall be void, voidable or unenforceable and no party to such contract shall be entitled to rescind or recover any payments made with respect to such contract based upon the failure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 4. AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION WITH RESPECT TO CERTAIN TRADERS.

(a) IN GENERAL.—

(1) RESTRICTION OF FUTURES TRADING TO CONTRACT MARKETS OR DERIVATIVES TRANSACTION EXECUTION FACILITIES.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by inserting after the first sentence the following: “The Commission may adopt rules and regulations requiring the maintenance of books and records by any person that is located within the United States (including the territories and possessions of the United

1 States) or that enters trades directly into the trade
 2 matching system of a foreign board of trade from
 3 the United States (including the territories and pos-
 4 sessions of the United States).”

5 (2) COMMISSION AUTHORITY OVER TRADERS.—

6 Section 4 of the Commodity Exchange Act (7 U.S.C.
 7 6) is amended by adding at the end the following:

8 “(e) The Commission shall have authority under this
 9 Act to require or direct a person located in the United
 10 States, or otherwise subject to the jurisdiction of the Com-
 11 mission, to limit, reduce, or liquidate any position on a
 12 foreign board of trade to prevent or reduce the threat of
 13 price manipulation, excessive speculation, price distortion,
 14 or disruption of delivery or the cash settlement process
 15 with respect to any contract listed for trading on a reg-
 16 istered entity.

17 “(f) CONSULTATION.—Before taking any action
 18 under subsection (e), the Commission shall consult with
 19 the appropriate—

20 “(1) foreign board of trade; and

21 “(2) foreign futures authority.”.

22 (3) VIOLATIONS.—Section 9(a) of the Com-
 23modity Exchange Act (7 U.S.C. 13(a)) is amended
 24 by inserting “(including any person trading on a for-

1 eign board of trade)” after “Any person” each place
 2 it appears.

3 (4) EFFECT.—No amendment made by this
 4 subsection limits any of the otherwise applicable au-
 5 thorities of the Commodity Futures Trading Com-
 6 mission.

7 **SEC. 5. WORKING GROUP OF INTERNATIONAL REGU-**
 8 **LATORS.**

9 Section 4a of the Commodity Exchange Act (7 U.S.C.
 10 6a) (as amended by section 4(a)(2)(B)) is amended by
 11 adding at the end the following:

12 “(g) WORKING GROUP OF INTERNATIONAL REGU-
 13 LATORS.—Not later than 90 days after the date of enact-
 14 ment of this subsection, the Commission shall invite regu-
 15 lators of foreign boards of trade to participate in a work-
 16 ing group of international regulators to develop uniform
 17 international reporting and regulatory standards to ensure
 18 the protection of the energy and agricultural futures mar-
 19 kets from excessive speculation, manipulation, and other
 20 trading practices that may pose systemic risks to energy
 21 and agricultural futures markets, countries, and con-
 22 sumers.”.

1 **SEC. 6. POSITION LIMITS FOR ENERGY AND AGRICUL-**
2 **TURAL COMMODITIES.**

3 Section 4a of the Commodity Exchange Act (7 U.S.C.
4 6a) is amended—

5 (1) in subsection (a)—

6 (A) by inserting “(1)” after “(a)”; and

7 (B) by adding after and below the end the
8 following:

9 “(2) In accordance with the standards set forth
10 in paragraph (1) of this subsection and consistent
11 with the good faith exception cited in subsection
12 (b)(2), with respect to energy and agricultural com-
13 modities, the Commission, within 90 days after the
14 date of the enactment of this paragraph, shall issue
15 a proposed rule, and within 180 days after issuance
16 of such proposed rule shall adopt a final rule, after
17 notice and an opportunity for public comment, to es-
18 tablish limits on the amount of positions that may
19 be held by any person with respect to contracts of
20 sale for future delivery or with respect to options on
21 such contracts or commodities traded on or subject
22 to the rules of a contract market or derivatives
23 transaction execution facility, or on an electronic
24 trading facility with respect to a significant price
25 discovery contract.

1 “(3) In establishing the limits required in para-
2 graph (2), the Commission shall set limits—

3 “(A) on the number of positions that may
4 be held by any person for the spot month, each
5 other month, and the aggregate number of posi-
6 tions that may be held by any person for all
7 months;

8 “(B) to the maximum extent practicable,
9 in its discretion—

10 “(i) to diminish, eliminate, or prevent
11 excessive speculation;

12 “(ii) to deter and prevent market ma-
13 nipulation, squeezes, and corners;

14 “(iii) to ensure sufficient market li-
15 quidity; and

16 “(iv) to ensure that the price dis-
17 covery function of the underlying cash
18 market is not distorted or disrupted.

19 “(4) In addition to the position limits for en-
20 ergy and agricultural commodities that the Commis-
21 sion establishes under paragraph (2), the Commis-
22 sion may require or permit a contract market, de-
23 rivatives transaction execution facility, or electronic
24 trading facility with respect to a significant price
25 discovery contract, to establish and enforce position

1 accountability, as the Commission determines may
 2 be necessary and appropriate to accomplish the ob-
 3 jectives set forth in paragraph (3)(B), provided that
 4 the number of positions that may be authorized
 5 under position accountability may not exceed the po-
 6 sition limits established under paragraph (2).

7 “(5) Nothing in this section shall require the
 8 Commission to revise any position limit for an agri-
 9 cultural commodity that is in effect on the date of
 10 enactment of this Act.”.

11 **SEC. 7. OVER-THE-COUNTER TRANSACTIONS.**

12 Section 2 of the Commodity Exchange Act (7 U.S.C.
 13 2) is amended by adding at the end the following:

14 “(j) OVER-THE-COUNTER TRANSACTIONS.—

15 “(1) DEFINITIONS.—In this subsection:

16 “(A) COVERED PERSON.—The term ‘cov-
 17 ered person’ means a person that enters into an
 18 over-the-counter transaction that is required to
 19 be reported under paragraph (3)(C).

20 “(B) OVER-THE-COUNTER TRANS-
 21 ACTION.—The term ‘over-the-counter trans-
 22 action’ means a contract, agreement, or trans-
 23 action in an energy or agricultural commodity
 24 that is—

1 “(i) entered into only between persons
2 that are eligible contract participants at
3 the time the persons enter into the agree-
4 ment, contract, or transaction;

5 “(ii) not entered into on a trading fa-
6 cility; and

7 “(iii) not a sale of any cash com-
8 modity for delivery.

9 “(2) AUTHORITY IN MAJOR MARKET DISTURB-
10 ANCES.—

11 “(A) IN GENERAL.—In the case of a major
12 market disturbance, as determined by the Com-
13 mission, the Commission may require any trad-
14 er subject to the reporting requirements de-
15 scribed in paragraph (3) to take such action as
16 the Commission considers to be necessary to
17 maintain or restore orderly trading in any con-
18 tract listed for trading on a registered entity,
19 including—

20 “(i) the liquidation of any futures con-
21 tract; and

22 “(ii) the fixing of any limit that may
23 apply to a market position involving any
24 over-the-counter transaction acquired in

1 good faith before the date of the deter-
2 mination of the Commission.

3 “(B) MAJOR MARKET DISTURBANCE.—The
4 term ‘major market disturbance’ means any
5 disturbance in a commodity market that dis-
6 rupts the liquidity and price discovery function
7 of that market from accurately reflecting the
8 forces of supply and demand for a commodity,
9 including—

10 “(i) a threatened or actual market
11 manipulation or corner;

12 “(ii) excessive speculation; and

13 “(iii) any action of the United States
14 or a foreign government that affects a
15 commodity.

16 “(C) The term ‘market disturbance’ shall
17 be interpreted in a manner consistent with sec-
18 tion 8a(9).

19 “(D) JUDICIAL REVIEW.—Any action
20 taken by the Commission under subparagraph
21 (A) shall be subject to judicial review carried
22 out in accordance with section 8a(9).

23 “(3) REPORTING; RECORDKEEPING.—

1 “(A) IN GENERAL.—The Commission shall
2 require each covered person to submit to the
3 Commission a report—

4 “(i) at such time and in such manner
5 as the Commission determines to be appro-
6 priate; and

7 “(ii) containing the information re-
8 quired under subparagraph (B) to assist
9 the Commission in detecting and pre-
10 venting potential price manipulation of, or
11 excessive speculation in, any contract listed
12 for trading on a registered entity.

13 “(B) CONTENTS OF REPORT.—A report re-
14 quired under subparagraph (A) shall contain—

15 “(i) information describing large trad-
16 ing positions of the covered person ob-
17 tained through one or more over-the-
18 counter transactions that involve—

19 “(I) substantial quantities of a
20 commodity in the cash market; or

21 “(II) substantial positions, in-
22 vestments, or trades in agreements or
23 contracts relating to the commodity;
24 and

1 “(ii) any other information relating to
2 over-the-counter transactions required to
3 be reported under subparagraph (C) car-
4 ried out by the covered person that the
5 Commission determines to be necessary to
6 accomplish the purposes described in sub-
7 paragraph (A).

8 “(C) OVER-THE-COUNTER TRANSACTIONS
9 TO BE REPORTED.—

10 “(i) IN GENERAL.—The Commission
11 shall identify each large over-the-counter
12 transaction or class of large over-the-
13 counter transactions the reporting of which
14 the Commission determines to be appro-
15 priate to assist the Commission in detect-
16 ing and preventing potential price manipu-
17 lation of, or excessive speculation in, any
18 contract listed for trading on a registered
19 entity.

20 “(ii) MANDATORY FACTORS FOR DE-
21 TERMINATIONS.—

22 “(I) IN GENERAL.—In carrying
23 out a determination under clause (i),
24 the Commission shall consider the ex-

1 tent to which each factor described in
2 subclause (II) applies.

3 “(II) FACTORS.—The factors re-
4 quired for carrying out a determina-
5 tion under clause (i) include wheth-
6 er—

7 “(aa) a standardized agree-
8 ment is used to execute the over-
9 the-counter transaction;

10 “(bb) the over-the-counter
11 transaction settles against any
12 price (including the daily or final
13 settlement price) of one or more
14 contracts listed for trading on a
15 registered entity;

16 “(cc) the price of the over-
17 the-counter transaction is re-
18 ported to a third party, pub-
19 lished, or otherwise disseminated;

20 “(dd) the price of the over-
21 the-counter transaction is ref-
22 erenced in any other transaction;

23 “(ee) there is a significant
24 volume of the over-the-counter

1 transaction or class of over-the-
2 counter transactions; and

3 “(ff) there is any other fac-
4 tor that the Commission deter-
5 mines to be appropriate.

6 “(iii) PERIODIC REVIEW.—The Com-
7 mission shall periodically conduct a review,
8 but not less than once every 2 years, to de-
9 termine whether to initiate a rulemaking to
10 include any additional transactions or
11 classes of transactions or to exclude any
12 transactions or classes of transactions from
13 the reporting requirements of this para-
14 graph.

15 “(D) ALTERNATE REPORTING.—The Com-
16 mission may permit any report required to be
17 reported under paragraph (A) by—

18 “(i) a member of a derivatives clear-
19 ing organization; or

20 “(ii) only one of the persons entering
21 into the transaction, provided that each
22 person entering into the transaction or
23 transactions has notified the Commission,
24 in the manner specified by the Commis-
25 sion, that one of the persons to the trans-

1 action or transactions has assumed, on be-
2 half of the other person to the transaction,
3 the legal obligations for such other person
4 to submit reports under this section, in-
5 cluding liabilities for failure to file such re-
6 ports in accordance with the Commission's
7 regulations. Any notification provided
8 under this paragraph shall be effective in
9 imposing such legal obligations and liabil-
10 ities upon such person.

11 “(E) RECORDKEEPING.—The Commission,
12 by rule, shall require each covered person—

13 “(i) in accordance with section 4i, to
14 maintain such records as directed by the
15 Commission for a period of 5 years, or
16 longer, if directed by the Commission; and

17 “(ii) to provide such records upon re-
18 quest to the Commission or the Depart-
19 ment of Justice.

20 “(4) POSITION LIMITS FOR OVER-THE-COUNTER
21 TRANSACTIONS.—Upon review of the information re-
22 ported to the Commission under paragraph (3), or
23 following a major market disturbance as determined
24 by the Commission under paragraph (2), the Com-
25 mission may establish, after due notice and oppor-

1 tunity for hearing, by rule, regulation, or order, such
2 limits on the amount of trading in over-the-counter
3 transactions as the Commission determines are nec-
4 essary and appropriate to accomplish one or more of
5 the following objectives with respect to any contract
6 listed for trading on a registered entity—

7 “(A) diminish, eliminate, or prevent exces-
8 sive speculation;

9 “(B) deter and prevent market manipula-
10 tion, squeezes, and corners;

11 “(C) ensure sufficient market liquidity;
12 and

13 “(D) ensure that the price discovery func-
14 tion of the underlying cash market is not dis-
15 torted or disrupted.

16 “(5) PROTECTION OF PROPRIETARY INFORMA-
17 TION.—In carrying out this subsection, the Commis-
18 sion may not—

19 “(A) require the publication of any propri-
20 etary information;

21 “(B) prohibit the commercial sale or li-
22 censing of any proprietary information; and

23 “(C) except as provided in section 8, pub-
24 licly disclose any information relating to any
25 market position, business transaction, trade se-

1 cret, or name of any customer of a covered per-
2 son.

3 “(6) APPLICABILITY.—Notwithstanding sub-
4 sections (g) and (h), and any exemption issued by
5 the Commission for any energy or agricultural com-
6 modity, each over-the-counter transaction shall be
7 subject to this subsection.

8 “(7) SAVINGS CLAUSE.—Nothing in this sub-
9 section modifies or alters—

10 “(A) the guidance of the Commission; or

11 “(B) any applicable requirements with re-
12 spect the disclosure of proprietary information.

13 “(8) BONA FIDE HEDGING TRANSACTION RE-
14 VIEW.—

15 “(A) IN GENERAL.—The Commission shall
16 review and revise the definition of bona fide
17 hedging transaction in subsection (c) of Section
18 4a of the Commodity Exchange Act (7 U.S.C
19 2(h)(2)(A)) as the Commission determines is
20 necessary and appropriate to ensure that the
21 commodity markets effectively perform their
22 risk management and price discovery func-
23 tions.”.

1 **SEC. 8. INDEX TRADERS AND SWAP DEALERS.**

2 Section 4 of the Commodity Exchange Act (7 U.S.C.
3 6) (as amended by section 3) is amended by adding at
4 the end the following:

5 “(f) INDEX TRADERS AND SWAP DEALERS.—Not
6 later than 60 days after the date of enactment of this sub-
7 section, the Commission shall—

8 “(1) routinely require detailed reporting from
9 index traders and swap dealers in markets under the
10 jurisdiction of the Commission;

11 “(2) reclassify the types of traders for regu-
12 latory and reporting purposes to distinguish between
13 index traders and swaps dealers; and

14 “(3) review the trading practices for index trad-
15 ers in markets under the jurisdiction of the Commis-
16 sion—

17 “(A) to ensure that index trading is not
18 adversely impacting the price discovery process;
19 and

20 “(B) to determine whether different prac-
21 tices or regulations should be implemented.”.

1 **SEC. 9. DISAGGREGATION OF INDEX FUNDS AND OTHER**
2 **DATA IN ENERGY AND AGRICULTURAL MAR-**
3 **KETS.**

4 Section 4 of the Commodity Exchange Act (7 U.S.C.
5 6) (as amended by section 8) is amended by adding at
6 the end the following:

7 “(g) DISAGGREGATION OF INDEX FUNDS AND
8 OTHER DATA IN ENERGY AND AGRICULTURAL MAR-
9 KETS.—The Commission shall disaggregate and make
10 public monthly—

11 “(1) the number of positions and total value of
12 index funds and other passive, long-only positions in
13 energy and agricultural markets; and

14 “(2) data on speculative positions relative to
15 bona fide physical hedgers in those markets.”.

16 **SEC. 10. ADDITIONAL COMMODITY FUTURES TRADING**
17 **COMMISSION EMPLOYEES FOR IMPROVED**
18 **ENFORCEMENT.**

19 Section 2(a)(7) of the Commodity Exchange Act (7
20 U.S.C. 2(a)(7)) is amended by adding at the end the fol-
21 lowing:

22 “(D) ADDITIONAL EMPLOYEES.—As soon
23 as practicable after the date of enactment of
24 this subparagraph, the Commission shall ap-
25 point at least 100 full-time employees (in addi-
26 tion to the employees employed by the Commis-

1 sion as of the date of enactment of this sub-
2 paragraph)—

3 “(i) to increase the public trans-
4 parency of operations in energy futures
5 markets;

6 “(ii) to improve the enforcement of
7 this Act in those markets; and

8 “(iii) to carry out such other duties as
9 are prescribed by the Commission.”.

10 **SEC. 11. WORKING GROUP ON ENERGY MARKETS.**

11 (a) ESTABLISHMENT.—There is established a Work-
12 ing Group on Energy Markets.

13 (b) COMPOSITION.—The Working Group shall be
14 composed of—

15 (1) the Secretary of Energy (referred to in this
16 section as the “Secretary”);

17 (2) the Secretary of the Treasury;

18 (3) the Chairman of the Federal Energy Regu-
19 latory Commission;

20 (4) the Chairman of Federal Trade Commis-
21 sion;

22 (5) the Chairman of the Securities and Ex-
23 change Commission;

24 (6) the Chairman of the Commodity Futures
25 Trading Commission; and

1 (7) the Administrator of the Energy Informa-
2 tion Administration.

3 (c) CHAIRPERSON.—

4 (1) INITIAL CHAIRPERSON.—The Secretary
5 shall serve as the Chairperson of the Working Group
6 for the 1-year period beginning on the date of enact-
7 ment of this Act.

8 (2) ROTATION OF CHAIRPERSONS.—For each 1-
9 year period following the period described in para-
10 graph (1), each individual described in subsection
11 (b) shall serve as the Chairperson of the Working
12 Group in the order corresponding to which the indi-
13 vidual is described in that subsection.

14 (d) PURPOSE AND FUNCTION.—The Working Group
15 shall—

16 (1) investigate the effect of speculation in en-
17 ergy commodities on energy prices and the energy
18 security of the United States;

19 (2) recommend to the President and Congress
20 laws (including regulations) that may be needed to
21 prevent excessive speculation in energy commodities
22 to prevent or minimize the adverse impact of high
23 energy prices on consumers and the economy of the
24 United States; and

1 (3) review energy security considerations posed
2 by developments in international energy markets.

3 (e) ADMINISTRATION.—The Secretary shall provide
4 the Working Group with such administrative and support
5 services as may be necessary for the performance of the
6 functions of the Working Group.

7 (f) COOPERATION OF OTHER AGENCIES.—The heads
8 of Executive departments, agencies, and independent in-
9 strumentalities shall, to the extent permitted by law, pro-
10 vide the Working Group with such information as the
11 Working Group requires to carry out this section.

12 (g) CONSULTATION.—The Working Group shall con-
13 sult, as appropriate, with representatives of the various
14 exchanges, clearinghouses, self-regulatory bodies, other
15 major market participants, consumers, and the general
16 public.

17 **SEC. 12. STUDY OF REGULATORY FRAMEWORK FOR EN-**
18 **ERGY MARKETS.**

19 (a) STUDY.—The Working Group established under
20 section 11(a) shall conduct a study to—

21 (1) identify the factors that affect the pricing of
22 crude oil and refined petroleum products, including
23 an examination of the effects of market speculation
24 on prices; and

1 (2) review and assess the roles, missions, and
2 structures of relevant Federal agencies, examine
3 interagency coordination, and identify and assess the
4 gaps that need to be filled for the Federal Govern-
5 ment to effectively oversee and regulate markets
6 critical to the energy security of the United States.

7 (b) ELEMENTS OF STUDY.—The study shall in-
8 clude—

9 (1) an examination of price formation with re-
10 spect to crude oil and refined petroleum products;

11 (2) an examination of relevant international
12 regulatory regimes; and

13 (3) an examination of the degree to which
14 changes in energy market transparency, liquidity,
15 and structure have influenced or driven abuse, ma-
16 nipulation, excessive speculation, or inefficient price
17 formation.

18 (c) REPORT AND RECOMMENDATIONS.—Not later
19 than 1 year after the date of enactment of this Act, the
20 Secretary of Energy shall submit to the appropriate com-
21 mittees of Congress a report that—

22 (1) describes the results of the study; and

23 (2) provides options and the recommendations
24 of the Working Group for appropriate Federal co-
25 ordination of oversight and regulatory actions to en-

1 sure transparency of crude oil and refined petroleum
2 product pricing and the elimination of excessive
3 speculation.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated such sums as are nec-
6 essary to carry out this section.

7 **SEC. 13. COLLECTION AND ANALYSIS OF INFORMATION ON**
8 **ENERGY COMMODITIES.**

9 (a) ACCURATE AND COMPLETE INFORMATION ON
10 ENERGY PRODUCING COMPANIES.—Section 205(h)(1) of
11 the Department of Energy Organization Act (42 U.S.C.
12 7135(h)(1)) is amended by adding at the end the fol-
13 lowing:

14 “(C) INFORMATION ON ENERGY-PRO-
15 DUCING COMPANIES.—Notwithstanding any
16 other provision of law, the head of each Federal
17 department or agency shall provide to the Ad-
18 ministrator, on the request of the Adminis-
19 trator, such information as the Administrator
20 may require to identify each energy-producing
21 company.”.

22 (b) ENHANCED DATA ON OWNERSHIP OF CRITICAL
23 ENERGY COMMODITIES.—Section 205 of the Department
24 of Energy Organization Act (42 U.S.C. 7135) is amended
25 by adding at the end the following:

1 “(n) COLLECTION OF INFORMATION ON OWNERSHIP
2 OF ENERGY COMMODITIES.—

3 “(1) IN GENERAL.—To ensure transparency of
4 information with respect to critical energy infra-
5 structure and product ownership in the United
6 States, the Administrator shall collect on a weekly
7 basis information identifying the ownership of all
8 commercially held oil and natural gas inventories in
9 the United States.

10 “(2) COMPANY-SPECIFIC DATA.—The informa-
11 tion shall include company-specific data, including—

12 “(A) volumes of product under ownership;
13 and

14 “(B) storage and transportation capacity
15 (including owned and leased capacity).

16 “(3) PROTECTION OF PROPRIETARY INFORMA-
17 TION.—Section 11(d) of the Energy Supply and En-
18 vironmental Coordination Act of 1974 (15 U.S.C.
19 796(d)) shall apply to information collected under
20 this section.

21 “(o) MONTHLY REPORTING ON ENERGY COMMODITY
22 TRANSACTIONS.—

23 “(1) IN GENERAL.—In accordance with para-
24 graph (2), to improve the ability to evaluate the en-
25 ergy security of the United States, any person hold-

ing or controlling energy futures contracts or energy commodity swaps (as defined in section 202 of the Energy Policy and Conservation Act) at a level to be determined by the Secretary for which the underlying energy commodity is physically delivered within the United States shall report on a monthly basis, with respect to the energy commodities and the by-products of the energy commodities—

“(A) the quantity of physical stocks owned;

“(B) the quantity of fixed price purchase commitments open;

“(C) the quantity of fixed price sales commitments open;

“(D) the physical storage capacity owned or leased; and

“(E) such other information as the Secretary determines is necessary to provide adequate transparency with respect to entities that control critical energy assets in the United States.

“(2) USE OF DATA.—Any data collected under paragraph (1) shall not be made public in a manner that is inconsistent with this Act.

“(p) FINANCIAL MARKET ANALYSIS OFFICE.—

9 “(3) ANALYSES.—The Administrator of the En-
10 ergy Information Administration shall take analyses
11 by the Office into account in conducting analyses
12 and forecasting of energy prices.”.

(c) CONFORMING AMENDMENT.—Section 645 of the Department of Energy Organization Act (42 U.S.C. 7255) is amended by inserting “(15 U.S.C. 3301 et seq.) and the Natural Gas Act (15 U.S.C. 717 et seq.)” after “Natural Gas Policy Act of 1978”.

18 SEC. 14. NATIONAL NATURAL GAS MARKET INVESTIGA-
19 TION.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, in order to ensure the integrity of natural gas markets, the Federal Energy Regulatory Commission (referred to in this section as the “Commission”) shall commence an investigation into the

1 role of financial institutions in natural gas markets, in-
2 cluding—

3 (1) trends in investment in natural gas storage,
4 transportation capacity, and pipeline infrastructure;

5 (2) factors contributing to potential effects on
6 wholesale natural gas prices, including the mecha-
7 nisms covered by physical natural gas supply con-
8 tracts;

9 (3) the character and number of positions held
10 in related financial markets; and

11 (4) any international considerations the Com-
12 mission considers relevant.

13 (b) ASSESSMENT.—The Commission may include in
14 the investigation an assessment of real-time market dy-
15 namics during the 2008 winter heating season.

16 (c) REQUIRED DATA.—Each Federal department and
17 agency shall comply with any request from the Commis-
18 sion for records, papers, and information in the possession
19 of the department or agency relating to any agreement,
20 contract, or transaction for the sale of an energy com-
21 modity for future delivery in interstate or foreign com-
22 merce, or any energy commodity swap.

23 (d) REPORTS.—Not later than 270 days after the
24 date of enactment of this Act, the Commission shall sub-
25 mit to the Committee on Energy and Natural Resources

1 of the Senate and the Committee on Energy and Com-
 2 merce of the House of Representatives a report on the
 3 findings, conclusions, and recommendations of the inves-
 4 tigation conducted under this section.

5 (e) ADDITIONAL INVESTIGATIONS.—On an annual
 6 basis and during any other period the Commission deter-
 7 mines necessary, the Commission shall—

8 (1) conduct an investigation that is similar to
 9 the investigation required under subsections (a)
 10 through (c); and

11 (2) submit to the Committee on Energy and
 12 Natural Resources of the Senate and the Committee
 13 on Energy and Commerce of the House of Rep-
 14 resentatives a report on the findings, conclusions,
 15 and recommendations of the investigation.

16 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 17 are authorized to be appropriated such sums as are nec-
 18 essary to carry out this section.

19 **SEC. 15. STUDIES; REPORTS.**

20 (a) STUDY RELATING TO INTERNATIONAL REGULA-
 21 TION OF ENERGY COMMODITY MARKETS.—

22 (1) IN GENERAL.—The Comptroller General of
 23 the United States shall conduct a study of the inter-
 24 national regime for regulating the trading of energy
 25 commodity futures and derivatives.

1 (2) ANALYSIS.—The study shall include an
2 analysis of, at a minimum—

3 (A) key common features and differences
4 among countries in the regulation of energy
5 commodity trading, including with respect to
6 market oversight and enforcement standards
7 and activities;

8 (B) variations among countries with re-
9 spect to the use of position limits, account-
10 ability limits, or other thresholds to detect and
11 prevent price manipulation, excessive specula-
12 tion, or other unfair trading practices;

13 (C) variations in practices regarding the
14 differentiation of commercial and noncommer-
15 cial trading;

16 (D) agreements and practices for sharing
17 market and trading data among regulatory bod-
18 ies and among individual regulators and the en-
19 tities that the bodies and regulators oversee;
20 and

21 (E) agreements and practices for facili-
22 tating international cooperation on market over-
23 sight, compliance, and enforcement.

24 (3) REPORT.—Not later than 1 year after the
25 date of enactment of this Act, the Comptroller Gen-

eral shall submit to the appropriate committees of Congress a report that—

(A) describes the results of the study;

(B) addresses the effects of excessive speculation and energy price volatility on energy futures; and

(C) provides recommendations to improve openness, transparency, and other necessary elements of a properly functioning market in a manner that protects consumers in the United States.

(b) STUDY RELATING TO EFFECTS OF NONCOMMERCIAL SPECULATORS ON ENERGY FUTURES MARKETS AND ENERGY PRICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the effects of noncommercial speculators on energy futures markets and energy prices.

(2) ANALYSIS.—The study shall include an analysis of, at a minimum—

(A) the effect of increased amounts of capital in energy futures markets;

(B) the impact of the roll-over of positions by index fund traders and swap dealers on energy futures markets and energy prices; and

1 (C) the extent to which each factor de-
2 scribed in subparagraphs (A) and (B) and non-
3 commercial speculators—

4 (i) affect—

5 (I) the pricing of energy com-
6 modities; and

7 (II) risk management functions;
8 and

9 (ii) contribute to economically efficient
10 price discovery.

11 (3) REPORT.—Not later than 2 years after the
12 date of enactment of this Act, the Comptroller Gen-
13 eral shall submit to the appropriate committees of
14 Congress a report that describes the results of the
15 study.

16 (c) REPORTS OF COMMODITY FUTURES TRADING
17 COMMISSION.—

18 (1) IN GENERAL.—The Commission shall sub-
19 mit to Congress—

20 (A) not later than 60 days after the date
21 of enactment of this Act, a report that describes
22 in detail the actions the Commission has taken,
23 is taking, and intends to take to carry out this
24 subsection (including any recommended legisla-

1 tive changes that are necessary to carry out this
2 subsection); and

3 (B) not later than 45 days after the date
4 described in subparagraph (A) and every 45
5 days thereafter until the date of implementation
6 of this subsection, an update on the report re-
7 quired under subparagraph (A).

8 (2) **ADDITIONAL EMPLOYEES OR RESOURCES.—**

9 Not later than 60 days after the date of enactment
10 of this Act, the Commission shall submit to Con-
11 gress a report that describes the number of addi-
12 tional positions and resources that the Commission
13 determines to be necessary to carry out this sub-
14 section (including the specific duty of each addi-
15 tional employee).

16 **SEC. 16. EXPEDITED PROCEDURES.**

17 (a) **IN GENERAL.**—Except as specifically provided
18 otherwise in this Act, the Commodity Futures Trading
19 Commission (referred to in this section as the “Commis-
20 sion”) shall issue any proposed rule required by this Act
21 within 90 days of enactment of this Act and shall issue
22 any final rule or order required by this Act within 180
23 days of enactment.

24 (b) **REPORT.**—If the Commission is unable to issue
25 any proposed or final rule within the period of time speci-

- 1 fied in subsection (a), the Commission shall submit to
- 2 Congress a detailed report that describes in each instance
- 3 the reasons for its inability to act in a timely manner.

○